

Office-Supreme Court, U.S.

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ALEXANDER L STEVAS,
CLERK

82-2038

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN F. SALSBURY, AS PARENT, NATURAL GUARDIAN AND
ADMINISTRATOR OF THE ESTATE OF SCOTT EDWARD SALSBURY,
Petitioner

vs.

ERIE COUNTY, CITY OF ERIE, DISTRICT ATTORNEY VESHECCO,
COUNTY DETECTIVE TROMBETTA, ERIE POLICE DEPARTMENT,
POLICE OFFICER DAVID FULTON, POLICE OFFICER THOMAS
MacDONALD AND POLICE OFFICER EDWARD ZAHAR,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

- 1) Are the actions of authorities acting under color of law as outlined in the Statement of the Case in violation of the rights of Scott Edward Salsbury, while he was alive?
- 2) Is the money awarded to the estates of our children, by the circumstances of their death, property under the definition of our Constitution and Federal Laws?
- 3) Are the actions of the authorities, acting under color of law, in an effort to shield ~~and~~ protect the legal and monetary interests of privileged persons under their protection, which would deny property to the estates of our children, actionable under the Constitution of the United States and Federal Law?
- 4) Does a parent have the right to freely investigate and prepare for their states rights in Court, concerning the death of their children, without the tampering by local officials and their associates, in an effort to impede such rights?

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OPINIONS BELOW

The opinion of the Court of Appeals, attached hereto in Petitioner's Appendix ("P. App.") at P. App. A4-A5

The opinion of the District Court attached hereto at P. App. A17, A18, A19, A20

Reference only P. App. A25

JURISDICTION

The Judgment of the Court of Appeals (attached hereto at P. App. A4-A5) was entered on February 25, 1983; the petition for rehearing was denied on May 6, 1983 (P. App. A26). The jurisdiction of this Court is invoked under 42 U.S.C. & 1983 with certain acts falling under & 1985 and & 1986.

STATUTE INVOLVED

Federal Civil Rights Litigation 42 U.S.C. provides in pertinent part:

Suits against public officials and agencies for violation of Federal Constitutional and Statutory Rights by persons acting under color of State Law.

STATEMENT OF THE CASE

A. Statement of the Facts

On December 29, 1979 at approximately 6:05 p.m., petitioner's son, Scott Edward Salsbury, laid in a roadway in the City of Erie over 100 feet from the intersection where he was struck.¹ Scott laid in the roadway with a rib that had been driven through the center of his body, his left lung completely severed in half, a large portion of his left rib cage broken, his left hip broken, and a section of his left femur completely smashed, twisted, and shortened.^{2,3}

1. From the Police Report made by Officer Fulton and Zahar Dec. 29, 1979 at the accident scene.

2. State's Right of Discovery at page (S.R.D. P) No. 856-A-1982 Testimony of Dr. Bednarski sworn to Feb. 10, 1983 page 16. Q. . . I recall you told me that the first rib was broken and that was indicative of severe force. A. That is correct. Q. You also told me that the rib had been driven into the center of his body, and you believe that is what had cut his trachea? A. That is correct. Q. You also told me that the upper part of the lung was cut off, is that correct? A. That is correct. Q. Also, . . there were a number of ribs that were broken . . A. Yes. Q. . . My son's hip was broken and also the femur. A. Left side. (S.R.D. P) 18 Q. Most all the damage was done to his left side? A. Correct.

3. (S.R.D. P) 14 Testimony of Dr. Mraz sworn to Nov. 17, 1982 Q. The nurse's report says the leg was shortened and twisted. A. Right.

STATEMENT OF THE CASE

With the ambulance and attendants standing ready to transport Scott to the hospital for treatment of severe trauma, Erie Police Officer Lewandowski, taking charge at the scene, refused to allow Scott medical treatment and refused to allow him to be loaded into the ambulance while his life was slowly expiring.⁴

This denial of treatment by a City of Erie Police Officer occurred at a time in which most severe trauma victims' highest percentage of chance for survival are within the first hour with medical treatment.⁵ This first hour of treatment is known to the members of the medical profession as the "Golden Hour".⁶

4. No. 856-A-1982 (S.R.D. P) 6 Testimony of Bonnie Rossey sworn to Sept. 27, 1982 Q. Did Gilbert Salsbury have some conflict with the Erie Police after he arrived at the scene of the accident? A. Yes. Q. Tell us all you can remember . . . A. These cops want him to lay here . . . and I want to take him to the hospital now, and they won't do it. He was conscious and he was telling my husband he was hurting.

5. Hamot Medical report 1981-82, (Trauma) pg. 7

6. No. 856-A-1982 (S.R.D. P) 13 Testimony of Dr. Bednarski sworn to Feb. 10, 1983 Q. Doctor, what often decides if a trauma victim lives or dies is whether definitive medical care can be provided within the first sixty minutes of injury, and this is a period of time the medical profession around the world calls the "Golden Hour". Have you heard that statement before -- the Golden Hour? A. Yes, sir. (S.R.D. P) 14 Q. . . Every second and every minute . . . my son was dying. Can you say that it was extremely important that he be removed from the scene of the accident as quickly as possible to be transported to the hospital? (Counselor Mr. Quinn, Sr.) "We'll object to the question and I direct the witness not to answer . . ."

STATEMENT OF THE CASE

A private investigation was begun by Daniel L. Barber Assoc., Inc., 9046 West Main Street McKean, PA 16426 with the legal assistance of counsel Dana Watson, who was engaged by petitioner.⁷ Private investigations were conducted to look at the events concerning the death of Scott and also the involvement of the Erie Police Officers and the Erie Police Department.⁸

7. The first Attorney, Will J. Schaaf, Esq., engaged by petitioner felt there was no case and it was necessary to engage Dana Watson, Esq., and on April 2, 1980, Mr. Schaaf wrote a letter to Mr. Watson expressing his point of view.

8. No. 856-A-1982 (S.R.D. P) 5 Testimony of Thomas Dana Watson sworn to Oct. 14, 1982 A. . . . Initially, we were concerned about learning the true facts . . both of the accident itself and, thereafter, of the investigation that was conducted by authorities . . or lack of investigation . . I think, by far, that was our primary concern, investigating both the accident and the actual investigation itself.

May, 1983 (Erie Times Newspaper reports)
State Attorney General LeRoy S. Zimmerman charged that Erie police made several errors including withholding information from other investigative agencies, while conducting an investigation of a policeman's death. . . . Zimmerman ruled the December 1980 death of Owen to be a homicide and issued a report that sharply criticized the Erie police department investigation. . . . The F. B. I. and other agencies were not given all of the facts in the case as Zimmerman's report claims.

STATEMENT OF THE CASE

Erie Police Officer Lewandowski, who having contributed to the death of Scott, later denied that he was at the scene even though his name appeared on the Police Report.⁹

9. Entered into record in State Case No. 856-A-1982 is the private investigator's report No. 80-2. On page 5 of this investigative report, the statement: Joseph Lewandowski, Erie Police Department, stated he was not at the scene although his name appears on the Police Accident Report as having been present.

Exhibit 00 dated Sept. 30, 1980 is the statement on August 22, 1980 a subsequent interview of Corporal Joseph Lewandowski was conducted. Lewandowski stated he was, in fact, at the scene of the accident, and that he did have a discussion with Gilbert Salsbury . . . about taking the victim into the hospital.

STATEMENT OF THE CASE

Coroner Merle Wood's report stated that Erie Police Officer Fulton and Officer Zahar did the initial investigation. These two officer tampered with the testimony of witnesses and evidence in an effort to cover the true nature of events concerning the death of Scott Salsbury.¹⁰

10. Private Investigator's report No. 80-2 witness Robert Snarz signed a statement marked Exhibit M Dated June 24, 1980. He states: He had walked up to the policeman at the corner and gave his name, address, and phone number and told him that he witnessed the accident. His polygraph examination No. 80-94, which indicated he was being truthful, was available to the D.A.'s Office.

No. 2670-A-1981 (S.R.D. P) 11 Testimony of Police Officer MacDonald Q. Your conversations with Officer Zahar and Fulton that evening, did they tell you, other than the two boys, (Kurt and Shawn Salsbury) that apparently there were no other witnesses to the accident? A. There were no other witnesses listed in their report, and they gave me no other names. (S.R.D. P) 21-23 and photos marked Exhibit 2 indicate there was extensive damage done to vehicle, which included a buckled fender. Q. Do you know whether that . . . was from impact with Scott Salsbury, or do you have any way to determine that? A. I don't know . . .

Q. Did you . . . ascertain the amount of damage to Mr. Matlock's vehicle? A. No. I had Officer Fulton and Zahar and Officer Perry examine the vehicle itself, and they brought no information to my attention that would require further examination of the vehicle. Submitted to the D.A. from private investigator's report No. 80-2, page 5 evidence: Officer Fulton, who had known the driver for 15 years, was told by a witness that there were no lights on the truck, and this information was deleted from the Police Report.

STATEMENT OF THE CASE

Erie Police Officer Fulton had known the driver for 15 years. Members of each family knew one another.¹¹

Officer Fulton maintained that they had a simple dart-out case,¹² which under the laws of the State of Pennsylvania, had he been successful in his efforts, would have prevented the heirs of Scott Edward Salsbury from claiming the money awarded by the true circumstances of Scott's death.¹³

11. No. 2670-A-1981 (S.R.D. P) 4 the sworn testimony of Police Officer David Fulton Q. At the time of the accident did you know Mr. Matlock? A. . . knowing of Mr. Matlock, yes. But I don't believe I have spoken ten words to that man in maybe 15 years.

(S.R.D. P) 5 A. One of his son's did play on one of my boy's basketball team . . . I possibly seen Mrs. Matlock there more than I seen Mr. Matlock.

12. From the Private Investigator's report No. 80-2 a signed statement by Officer Fulton stated that he was satisfied that he had a case of darting out.

13. It was over two years before the estate of Scott Salsbury was awarded an out of Court settlement of the full face value from the driver's insurance. By this time, petitioner had spent in excess of that amount because respondents made it much more difficult to recover damages as a result of the tampering of witnesses, their statements, and evidence.

STATEMENT OF THE CASE

The City of Erie Police Department, specifically Officer Thomas MacDonald (Traffic Investigator), having known implications presented by Officer Fulton, refused to investigate when a request was made in person by petitioner.¹⁴

As the actions of the Erie City Police came to light in the course of investigations and discussions with Counselor Dana Watson, it became imperative that petitioner communicate with the District Attorney's office as is everyone's duty to report such matters to the appropriate authorities.

14. (S.R.D. P) 10 Testimony of Officer MacDonald sworn to Jan. 13, 1982. Q. Did Officer Fulton or Zahar at that time tell you that they knew Mr. Matlock? A. Officer Fulton stated . . . that he was a coach of boy's baseball or little league, and he knew that . . . he knew that. From the Private Investigator's report No. 80-2 signed by Officer MacDonald the 17th of July 1980 this statement: Fulton mentioned Matlock had been involved in little league, and I believe Fulton . . . knew him prior to the accident.

No. 2670-A-1981 (S.R.D. P) 27 Testimony of Officer Zahar sworn to Jan. 20, 1982. Q. Did Officer Fulton tell you . . ."Gee, I knew that guy, Matlock"? A. . . I assumed that he knew him. I believe it was something to do with possibly he coached his boy in little league or something to that effect.

(S.R.D. P) 14 Testimony of Officer MacDonald Q. Subsequently you stated you did have a meeting with John Salsbury, the father of the boy. A. Yes. Q. At the Department? A. Yes. Q. Did you initiate that meeting . . ? A. No. Mr. Salsbury came in.

STATEMENT OF THE CASE

Between the dates of March 9, 1980 and Jan. 28, 1981, petitioner had mailed six certified letters to the District Attorney's Office requesting an investigation into the police matter.¹⁵ The District Attorney's office did not talk with the officers involved as requested,¹⁶ and for this reason Counselor for the District Attorney and the County Detective committed perjury before the Federal Courts by maintaining that they had looked at the Police Matter and found no abuse of discretion.¹⁷

15. Certified letters P18 3382010, 3382020, 3382481, 3382509, 3382524, and 3382642.

16. No. 2670-A-1981 (S.R.D. P) 15 testimony of David Fulton sworn to Jan. 20, 1982. Q. Have you been contacted by the D.A.'s office? A. No.

No. 2670-A-1981 (S.R.D. P) 28 testimony of Edward Zahar sworn to Jan. 20, 1982. Q. Have you been contacted by the D.A.'s office with regard to this incident? A. No.

Reference Page 5 of this Brief, Footnote #9. The D.A.'s office had full knowledge of this information. Private Investigator's Report No. 80-2 was submitted to that office approx. Oct. 9, 1980.

17. Federal Complaint No. 82-61, motion to dismiss pursuant to Rule 12 of Federal Procedure submitted by Timothy J. Lucas, Esq. 25th day of March 1982, Page 1 this statement: The D.A.'s office reviewed the investigation as conducted by the City of Erie Police and found no abuse of discretion.

In the course of petitioner's private investigation there came a need to furnish to accident reconstruction experts, x-rays taken Dec. 29, 1979 at St. Vincnet Trauma Center.

Petitioner was not able to gain access to these x-rays even though Coroner Merle Wood's Official Report stated that Trauma Center Nurse, Mrs. F. Orr, called that same night and said they were taken.¹⁸ These missing x-rays that were withheld from petitioner in the course of investigation into his son's death, were extremely important in the efforts to secure standing in the State Court of Pennsylvania.

Within 6 working days when the attending surgeon, Dr. Bednarski, had written that x-rays could not be found¹⁹ a meeting was held Feb. 5, 1981, approx. (1.1) years after the death of Scott, at the request of the District Attorney's Office.

18. At the time of Thomas Dana Watson's testimony 856-A-1982 (S.R.D. P), the complete Barber report No. 80-2 was given to Counsel for defense, and from that report was copied and entered into record certain information, one of which was the Coroner's Investigative report marked Exhibit D.

19. The letter from Dr. Bednarski, attending surgeon, dated Jan. 28, 1981 was entered into (S.R.D. P) No. 856-A-1982 as Hipwell Exhibit 2.

STATEMENT OF THE CASE

With petitioner and his counsel was the Private Investigator, Mr. Hipwell. Mr. Hipwell was not allowed to participate in this meeting and sat in the hallway the entire time. In the course of this meeting, County Detective Trombetta tampered with the testimony of witnesses and effected petitioner's rights to Counsel.²⁰

Assistant District Attorney Connely stated that if witnesses would ever remember what they had signed in the Private Investigative report No. 80-2 prepared by Barber Associates, he would have the County Detective testify against them.²¹

20. There is a signed statement that was made within a very short time of this meeting signed by Private Investigator Hipwell concerning the mental state that Counselor Watson and petitioner were in when they stepped into the hallway after this Feb. 5 meeting. This has not become part of record, but it is nonetheless available as substantiating evidence.

21. No. 856-A-1982 (S.R.D. P) 20 Testimony of Dana Watson, Esq. sworn to Oct. 14, 1982. Q. Tell us very briefly what occurred. A. Is this the Feb. 5 meeting? Q. Yes. A. Of 81? Q. That is. correct. A. As I recall, that was the meeting with the County Detective Trombetta. Q. ... Yes. A. Well, at that time, I recall being somewhat taken aback by what occurred at that meeting. (S.R.D. P) 21 Testimony of Dana Watson, "I was not, myself, satisfied with what they had done. They may have had legitimate reasons for what they did. I don't know, but I personally and professionally was not satisfied. (S.R.D. P) 33 "I would hope that that would be the reason. Even if it was a mistake. I hope they would be sincere in their opinion, but that was a question too."

STATEMENT OF THE CASE

Concerned with what had occurred in the February 5 meeting in the District Attorney's Office, petitioner requested private investigator Barber to reinterview witnesses. It was discovered that the County Detective Trombetta had premeditated false information in an attempt to completely destroy petitioner's rights in State Court and petitioner's right to counsel. (Dana Watson Esq. removed himself from the case).

Knowing there had to be a reason to motivate the District Attorney's Office to such an extreme, petitioner was able to learn through a private investigation, which lead to the filing in Federal District Court Case No. 82-290, that District Attorney Veshecco is on the Board of Corporate members of St. Vincent Health Center, and that he has associated with the bone specialist, Dr. Mraz, who placed a pin in the leg of Scott Salsbury.²²

22. In Federal Case No. 82-290 the D.A.'s counsel in citing many reasons to dismiss did not deny that the D.A. was on the Board of Corporate members of the Health Center.

No. 856-A-1982 (S.R.D. P) 22 Testimony of Dr. Mraz sworn to Nov. 17, 1982. Q. Do you know the District Attorney, Michael Veshecco? A. Yeah.

On the first day of March 1982 petitioner filed in the Common Pleas Court of Erie County Pennsylvania a complaint No. 856-A-1982 against St. Vincent Health Center regarding the missing leg x-rays. The Pennsylvania Common Pleas Judge filed that there was no cause of action and the following facts in this proceeding were entered into record.²³

This case is on appeal to the Superior Court of the State of Pennsylvania No. 00273PGH83.

23. 856-A-1982 (S.R.D. P) 27 Testimony of Richard Calvin Gibson, Manager of x-ray sworn to Aug. 20, 1982. Q. Did I tell you that Dr. Mraz stated to me that he knew the x-ray was taken? A. No, sir, I knew . . I believe . . I know I got that from Kathleen Eck in medical records, when we asked about that. (S.R.D. P) 31 Q. Why did you search for this x-ray if you knew your own records say that it didn't exist? A. If you saw something, and then the final was when the one record about the possible . . the traction and it was noted that there was a fracture of the femur. For those reasons . . (S.R.D. P) 53 Q. Have you talked to any investigators, . . Let's say agency, whether it is State, Federal, or Local? A. Not that I remember. (S.R.D. P) 32 Q. . . Would it be possible to pull a couple sheets out of there, let's say that there was an x-ray on a third sheet, would it be possible to pull that sheet out of the records? A. Yes . .

Footnote #23 continued

23. No. 856-A-1982 (S.R.D. P) 14 Testimony of Dr. Mraz sworn to Nov. 17, 1982 Q. Do you recall sending me down to the hospital and asking Sister Mary Paul to guide me, to help me look for these x-rays? A. It's obvious from the records that there wasn't a film taken, and it was my mistake in assuming that there was and that is all I can say about it. (S.R.D. P) 14 Q. Whoever made out that report had written that on there. A. Yeah. And I am sure it was done without an x-ray. They just looked at the leg. It's obvious when somebody has a fractured leg. (S.R.D. P) 10 Q. How long would you estimate it would have taken to take that x-ray? A. It would have taken an extra seven, eight minutes . . . (S.R.D. P) 16 Q. For the records . . . A. I don't know the exact time period, they were trying to wheel him out as I was putting the pin in.

No. 856-A-1982 (S.R.D. P) 14 Testimony of Bonnie Rossey sworn to Sept. 27, 1982. Q. Did the nurse tell you later that they had taken an x-ray and that they were going to put a pin in Scott's leg? A. They told us all. We were all in the waiting room. She was directing it to us all, but I heard it.

STATEMENT OF THE CASE

Rights of discovery in the case against St. Vincent Hospital disclosed that there was a party misrepresenting themself as John Salsbury, the father, requesting the hospital to check to see if they could find missing x-rays, before the appropriate people knew they were in fact missing.²⁴

This person, misrepresenting themself as the father approximately three weeks after the death of Scott Salsbury, had to be an expert in their field to immediately recognize the value that these x-rays would have in a Court of Law.

24. No. 856-A-1982 (S.R.D. P) .7 Testimony of Richard Calvin Gibson, Manager of x-ray, sworn to Aug. 20, 1982. Q. . . Try to date that first one if you can, . . . when that first call occurred. A. I was placing it in late January early February, because the thing that surprised me, it was so soon after his son's death. (1980)

No. 856-A-1982 (S.R.D. P) 14 Testimony of Attorney Dana Watson, Esq., sworn to Oct. 14, 1982. Q. . . . Time frame that we are looking at . . . A. Yes. We have the bill for you for the duplicate and then my letter to Dr. Bednarski on the 7th of January, '81. Then, receiving his response on the 28th of January of '81, forwarding it to you on February 2nd of '81, and then the medical records request from Dr. Mraz and Dr. Tavana, it does all tie together in that one period of time, the end of that year and the beginning of the next.

STATEMENT OF THE CASE

Petitioner has not at this time been able to determine who this person was, only that statements to the Coroner by the hospital's personnel is supportive of the facts that the x-rays did exist and that this evidence was tampered with.²⁵

On the tenty day of March 1982 petitioner had filed in the Federal District Court for the Western District of Pennsylvania Case No. 82-61 ERIE.

District Court Judge Glenn E. Mencer, upon considering of various motions to dismiss, entered an order June 9, 1982 that all motions to dismiss are granted and the complaint filed by Plaintiff is hereby dismissed.

25. 856-A-1982 (S.R.D. P) Exhibit "D" The Coroner's Office was called by St. Vincent Health Center Trauma Nurse, Mrs. F. Orr, at 10:15 P.M. on 12/29/79 reporting to us the death of Scott Edward Salsbury . . . x-rays were taken which showed a fractured pelvis and femur . . . (The rest of the report is deleted for it is necessary in this case only to show that the femur x-ray was taken, the night of December 29, 1979, according to hospital personnel).

STATEMENT OF THE CASE

B. The Proceedings Below

In Case No. 82-61, the Federal District Court ruled: That since the father did not advance his claim in the capacity of a fiduciary by virtue of being either the Executor or Administrator of his son's estate,

. . . Accordingly, we must grant the motion to dismiss.

Because of the Court's decision to dismiss for failure of Plaintiff to advere his capacity to bring the suit, petitioner had refiled Case No. 82-167 which did advere his capacity to bring a suit before the Federal Courts.

A status conference was scheduled on the 23rd day of August, 1982 at 4:30 p.m. before the honorable Glenn E. Mencer, United States Courthouse, Erie, PA.

At the time of this status conference, the Court had asked petitioner three times if he would consider settling the matter out of Court. Petitioner, having full knowledge that the men involved in his complaint have participated in similar acts against other citizens of the community, felt that his responsibility was to ask the Court to hear the facts and allow other families to testify, which would support the issuance of injunctive and declaratory judgments. to prevent a continuation of the violation of our Constitution and the Federal Laws of the United States.

STATEMENT OF THE CASE

On the 16th day of September, 1982, the Federal District Court upon consideration of various motions to dismiss filed on behalf of the Defendants, complaint No. 82-167 filed by the Plaintiff is hereby dismissed.

On February 24, 1983, Cases on Appeal to the Third District Court, both of which were essentially the same, Case No. 82-5386 and No. 82-5586, the second of which petitioner advered his rights in his capacity to bring suit, were submitted under the Third Circuit rule 12(6) before SEITZ, Chief Judge, HIGGINBOTHAM and POSENN, Circuit Judges.

The Third Federal Court of Appeals, after consideration of the contentions raised by Appellant, it was adjudged an order that the judgment of the District Court be and is hereby affirmed.

On March 23, 1983, petitioner entered a petition for a rehearing before the Third Federal Court of Appeals Case No. 82-5386.

On May 6, 1983, the petition for rehearing was submitted before SEITZ, Chief Judge, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, Circuit Judges, and ROSENN, Senior Circuit Judge.

The petition for rehearing Case No. 82-5386 was denied.

- A. The Decision of the Court of Appeals for the Third Circuit Below is in Conflict With Decisions of the Court of Appeals for Other Circuits and its Own Decisions Made in Other Cases.

The decision of the Court of Appeals should be reviewed by this Court because it conflicts with decisions of other Courts of Appeals in that the complaint does state a cause of action against the city of Erie Police Department and Police Officers Fulton, MacDonand and Zahar, upon which relief can be granted.

These defendants are "PERSONS" who acted or failed to act "under color of law," 42 U.S.C. & 1983. These acts or failures to act caused damage to the rights of Plaintiff which are secured and protected by the U.S. Constitution, namely the right to property and the right to equal protection of the law, ie, unimpeded access to the Courts for civil relief and evenhanded treatment by Police Officers. Witness tampering, evidence tampering, and other police interference with the judicial process is actionable under 42 U.S.C. & 1983. Also, improper police practices in the course of their investigations is a cause of action. Failure to make arrest for crimes committed by favored persons is actionable under 42 U.S.C. & 1983.

REASONS FOR GRANTING THE WRIT

All three Police Officers named gave statements while under oath that were complete departures from the truth, this associated with all other acts of defendants is actionable under 42 U.S.C. & 1983.

Negligence is a cause of action under 42 U.S.C. & 1983, Parratt v. Taylor, 68 L. Ed 2d 420 (U.S. 1981). The City of Erie and the defendants' acts and inactions in view of widespread community complaint and discontent concerning accident investigations and reports constitute a policy of inaction and indifference which in this case deprived this Plaintiff of his constitutionally protected property rights and rights to access of the Courts for civil relief, Leite v. City of Providence, 463 F. Supp. 585, 590-91 (D.R.I. 1978); Turpin v. Mailet, 619 F. 2d 196 (2d Cir.), cert. denied 449 U.S. 1016 (1980); Commonwealth of Pennsylvania v. Porter, 659 F. 2d (3rd Cir. 1981).

Willful and gross negligence also constitutes a cause of action under 42 U.S.C. & 1983. Landrigan v. City of Warwick. 628 F. 2d 736, 742 (1st Cir. 1980).

Negligent supervision and inadequate training of Police Officers also constitutes a basis for obtaining relief against the City of Erie, particularly where there has been a policy of deliberate indifference; Hamptm v. Holinesburg Prison Officials, 546 F. 2d 1077 (3d Cir. 1976).

REASONS FOR GRANTING THE WRIT

In the present case the investigating officer had received no official training in accident investigation, (other than on the job) and upon discussing this case with his supervisor, their mutual decision was to investigate no further. When Plaintiff went to Police Headquarters and made a complaint about the investigation, investigative officer stated to Plaintiff "that dwelling on this would not change the facts and you should go home and forget it." Plaintiff spent a large sum of money dwelling on the facts, he did not go home and just forgot it and the facts that he found were that things did not happen as portrayed by the police and other authorities and that the police had in fact tried to cover the incident and did not look at the actions of the officers who by his own statements had known the driver for fifteen years.

Defendants, District Attorney Veshecco and County Detective Trombetta lack standing to request of the Courts dismissal based on their statement that they conducted an ethical or legal investigation, since this is a complete departure from the truth.

County Detective Trombetta tampered with the testimony of witnesses. He also stated that witnesses changed their testimony and became witnesses contrary and in direct conflict with the Barber Report.

He also stated that someone led the witnesses before statements were signed. The County Detective also by his actions confirmed a concurrence with his office that he would testify against witnesses if they would remember what they signed in the Barber Report. Each action of the County Detective was deliberate, false and in total violation of State and Federal laws.

Willful and gross negligence constitutes a cause of action. Negligence in and by itself constitutes a cause of action. Parratt v. Taylor, 68 L. Ed. 2d 420 (US. 1981). Leite v. City of Providence, 463 F. Supp. 585, 590-91 (D.R.I. 1978). Turpin v. Mailet, 619 F. 2d 196 (2d Cir.), cert. denied 449 U.S. 1016 (1980); Commonwealth of Pennsylvania v. Porter, 699 F. 2d 306 (3rd Cir. 1981).

Defendants, District Attorney Veshecco and County Detective Trombetta lack standing to request of the Courts dismissal based on their statement that they found no abuse of discretion by the City of Erie Police, since this statement is a complete departure from the truth.

The District Attorney's office was provided not only evidence and testimony but "positive" polygraph tests of more than a few witnesses other than Plaintiff, concerning this Police Matter.

Depositions from Police officers show that Counsel for the D.A. and County Detective has falsely addressed the Courts in this suit.

Other than Plaintiff's private investigator, no one of any authority ever talked with the officers involved in this matter as of the date of depositions January 20, 1982.

Negligent supervision within the District Attorney's office constitutes a basis for obtaining relief, particularly where there has been a policy of deliberate indifference; Hamptm v. Holinsburg Prison Officials, 546 F. 2d 1077 (3 Cir. 1976).

Willful and gross negligence also constitutes a cause of action. Landrigan v. City of Warwick, 628 F. 2d 736, 742, (1st Cir. 1980).

Defendants, District Attorney Veshecco and County Detective Trombetta lack standing to request of the Courts a dismissal based upon the prosecution or nonprosecution of other persons.

Nowhere in pleadings Case No. 82-61, will the Court find Plaintiff holding to the District Attorney's office, (i.e. Erie County) a failure to accept criminal charges. These pleadings deal solely with and are specific in dealing with (Article 14-Rights Denied; see pages 2 and 3 No's 10 through 20 and page 4-b,c,d, and e of the complaint.

Further, that the unconstitutional acts committed by the "officers" or Erie County, ie, (County Detective and District Attorney) occurred at the latest, three (3) months prior to the filing of private criminal complaint by Plaintiff.²⁶ Defendants were at that time, as their letters clearly state, acting in an "investigative" and administrative capacity.

Further, that the prosecutors actions in his investigative capacity will not provide immunity. Jacobson v. Rose, 592 F. 2d 515, 524 (9th Cir. 1978). See also Henderson v. Fisher, 631 F. 2d 1115, 1120 (3d Cir. 1980); Briggs v. Goodwin, 569 F. 2d 10 (B.C. Cir. 1977); Helstoski v. Goldstein, 552 F. 2d 564 (3d Cir. 1977).

26. The acts committed in the D.A.'s office February 5, 1981 (ref. P. 10 thru 12 of this brief) occurred four months prior to a June 1, 1981 letter from District Justice Lefavier which is in reference to complaint filed May 1, 1981. Again, counsel for the D.A. and County Detective have intentionally mislead the Federal Courts in an effort to shield from its view, the true facts that are put forth in complaint No. 82-61 before the Federal Court as petitioner has stated.

Defendants, District Attorney Veshecco and County Detective Trombetta lack standing to request of the Courts a dismissal based upon any remedy against other parties not named in this suit as may be initiated in a State Court.

Further, since the issue of a remedy for denial of a private criminal complaint has been initiated by Defendants and not by Plaintiff, it has no place in these proceedings.

Petitioner had asked the Appeals Court as a point of law to deny to Defendants any further issuing of facts which they are stating are in the complaint unless they specifically refer to the complaint itself, ie, page no. and etc.

Defendant, Erie County may not rely on the basis of Respondent Superior.

In the suit before this Court, unconstitutional acts were committed by the "Officers" of Erie County. Municipalities sued under & 1983 are not entitled to qualified immunity when the acts are committed by municipal officers acting in the capacity of their office.

Governmental entity can only act through its principal officials. Hays v. Jefferson County, No. 80-3010 (6th Cir. Jan. 4, 1982).

- B. The Decisions of the Court of Appeals for the Third Circuit Below are in Conflict With Decisions of the Supreme Court of the United States.

The decision of the Court of Appeals should be reviewed by this Court because it conflicts with decisions made by the Supreme Court for affirmative action in regards to local officials and local governing bodies.

Local officials, ie, Police Supervision (City of Erie) County Detective, and County District Attorney may be sued for punitive damages, *City of Newport v. Fact Concerts Inc., U.S., 69 L. Ed. 616 (1981)*.

Municipalities sued under & 1983 are not entitled to qualified immunity from liability. *Owen v. City of Independence, Missouri, 445 U.S. 622 (1980)*.

As "persons" subject to liability under 42 U.S.C. & 1983 for violating another person's federally protected rights, local governing bodies can be sued directly under & 1983 for monetary, declaratory, or injunctive relief where the action that is alleged to be unconstitutional implements or executes a policy, statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. ie, Police Supervision (City of Erie) County Detective, and County District Attorney.

REASONS FOR GRANTING THE WRIT

Petitioner had asked the Appeals Court not to affirm the District Court's decision regarding any state action. Respondents lack standing to request of the Court dismissal based upon any state action pending.

Supreme Court in the case of Patsy v. Board of Regents of the State of Florida, No. 80-1874.

The Appeals Court affirmed the decision of the District Court, which was in error, in that the complaint specified plaintiff's family relationship with his son and that the actions of the defendants made it much more difficult and added extreme cost in an effort to recover damages as a result of the tampering of witnesses, their statements and evidence.

Under Rule 17 (a) of the Federal Rules of Civil Procedure there was sufficiency of Plaintiff's suit. Rule 17 (a) reads in part:

An . . . administrator . . . may sue in his own name without joining with him the party for whose benefit the action is brought; . . . The people who drafted the Federal Rules of Civil Procedure recognized that fathers frequently serve as administrators for the estates of their children. and permit fathers to sue on behalf of such estates in their own name without mentioning the name of the estate.

This is further confirmed by Rule 9 (a), which reads in part:

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity . . . except to the extent required to show the jurisdiction of the court.

Because Plaintiff's suit was based on a Federal Statute, it was not necessary to mention anywhere in the complaint that Plaintiff was suing on behalf of his son's estate; however, the statements that Plaintiff was the father and was suing for the events that followed his son's death should have removed any doubt.

Rule 17 (a) further provides:

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

This means that, even if the District Court was right that Plaintiff had not sufficiently alleged that he was suing as the administrator of his son's estate, the Court should not have dismissed Plaintiff's suit, but should have permitted Plaintiff to make necessary amendments to indicate his representative capacity in bringing this suit.

C. The Petition Presents an Important Question of Federal Law Which Should Be Specifically Addressed by This Court.

The Federal Third Circuit Appeals Court in affirming the decision of the District Court has not upheld the decisions of the Supreme Court of the United States, in that, the court must construe the complaint liberally and resolve all doubts in favor of the Plaintiff. Further, a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957).

The fundamental flaw in the analysis of both the District Court and the Appeals Court is its belief that petitioner can prove no set of facts. This brief contains less than 1% of evidence and facts that have either been sworn to or firmly documented.

The Appeals Court has made a fundamental flaw in the analysis that confirms the District Court in, in that, it is supportive of the contention made by the District Court "that common sense would dictate that all of the circumstances complained of by the Plaintiff arose following the death of defendant. The City of Erie Solicitor Lawrence L. Kinter in is brief for appealees, City of Erie, et al case no. 82-5386 presented this same contention as put forth by the District Court. (See solicitors brief page 3 paragraph 1.

The City Solicitor, Lawrence L. Kinter, also raised the contention in the brief for Appealees city of Erie, et al case no. 82-5386 page 3 that appealees are in no way charged with the causing or contributing to the death of defendant.

With these contentions raised appellant in his reply brief in case no. 82-5386 on page 2 stated to the Appeals Court the following:"

Proceedings in the Court of Common Pleas of Erie County Pennsylvania Case No. 856-A-1982 have disclosed that the Erie City Police did contribute to the death of Scott Edward Salsbury.

"Reference this petition pages 2 thru 5

The District Court has reached far afield in its responsibilities by making the statement in Case No. 82-467 that "Common sense would dictate there could have been no official wrong-doing until after the death of Scott Salsbury." Of course, Appellees would adopt the reasoning of the District Court in this matter.

This statement by the District Court is not only contrary to events that occurred but was made by a Court which has refused the documentation of facts and evidence which will clearly show that common sense would dictate that certain specific acts that occurred, as outlined in Plaintiff's original complaint, were initiated while Scott Salsbury was alive.

By the District Courts propoundment of a statement which was made without allowing the gathering of facts and refusing to allow this case to go forward, clearly shows that the Court has taken the position to ensconce itself on behalf of Appellees.

Petitioner wishes to beg leave of the Court and bring to its attention: that mistakes of a pleader must not defeat substantial justice.

Federal Rule Civ. Proc. Rule 8 (F. U.S.C.A.)

The estates left by the events of our children's death are property guaranteed by State Law. Any effort to deny access to this State Law and this property is actionable under our Federal Constitution. This right has been guaranteed under our Constitution and Federal Law and Appellant does not have to argue that there is such a right, but must only put forth a request that it should be upheld.

The rights of a Parent to freely investigate and prepare for their states rights in Court, concerning the death of their children, without the tampering by local officials, to impede such rights does not present an argument before the Supreme Court of the United States, for the very Principle of Law dictates that to have rights in Court, we must have the freedom to prepare for these rights.

If ever a law should be allowed to deny the freedom to prepare for our rights in Court, the very fundamental principles of justice, as history has made tragically clear, will not provide a Court system that can best serve a Nation in its efforts to enforce Individual Freedom and Human Rights.

REASONS FOR GRANTING THE WRIT

The interpretation and analysis of the administration of Federal Law in this case will have lasting impact upon the rights of all the citizens in these United States.

CONCLUSION

For all of the foregoing reasons, petitioner requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

John F. Salsbury
7246 McGill Road
Harborcreek, PA 16421
(814) 899-2071

Respondents' Counsel:

Timothy J. Lucas
Office of District Attorney

Lawrence L. Kinter
City of Erie

Roger H. Taft
Deputy County Solicitor

Petitioner, Pro Se

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

(A1)

No. 82-5386

JOHN F. SALSBURY,
Appellant

vs.

ERIE COUNTY, CITY OF ERIE, DISTRICT ATTORNEY
VESHECCO, COUNTY DETECTIVE TROMBETTA, ERIE POLICE
DEPARTMENT, POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD, POLICE OFFICER EDWARD
ZAHAR,

Appellees

(Western D.C. Civil No. 82-61)

Present: ALDISERT and HIGGINBOTHAM, Circuit Judges,
and MEANOR, District Judge.

1. Motion by appellee, Erie County, to dismiss appeal for appellant's failure to file brief and appendix in compliance with Federal Rules of Appellate Procedure and Rules of the Third Circuit.
2. Appellant's opposition to motion by appellee, Erie County, to dismiss appeal.
3. Motion by appellees, City of Erie, Erie Police Department, Police Officers David Fulton, Thomas MacDonald and Edward Zahar, to dismiss appeal for appellant's failure to file brief and appendix in compliance with Federal Rules of Appellate Procedure and Rules of Third Circuit.

COURT OF APPEALS OPINION

(A2)

4. Appellant's opposition to motion by
appellees, City of Erie, et al, to dismiss appeal,
in the above-entitled case.

Respectfully,

Sally Mrvos
Clerk

Sept. 17, 1982

OPINION OF THE COURT

ALDISERT, Circuit Judge.

The foregoing motion is considered.

Appellant is ordered to file a brief and appendix in accordance with the Federal Rules of Appellate Procedure, and the Rules of this Court, within 30 days. Otherwise, the Appeal will be dismissed. Kushuer v. Winterthur
620 F. 2d 404 (3d Cir. 1980).

By the Court,

Dated: September 29, 1982

ad/cc: John F. Salsbury
Lawrence L. Kinter, Esq.
Roger H. Taft, Esq.

COURT OF APPEALS OPINION

(A3)

John F. Salsbury

vs.

City of Erie, et al

APPEAL FROM DISTRICT COURT

District: Western

D.C. Docket No. 82-61 Erie

Date filed in D.C. 3/10/82

Date Notice of Appeal filed

7/8/82

Sally Mrvos, Clerk
United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106

RE: Case No. 82-5386 RESUBMITTED BY ORDER OF
JUDGE ALDISERT DATED SEPT. 17, 1982

Dear Ms. Mrvos:

Enclosed you will find four copies of Appendix and
twenty-five copies of Brief resubmitted in accor-
dance with the order by the Third Circuit Appeals
Court.

Very truly yours

John F. Salsbury
7246 McGill Road
Harborcreek, PA 16421
(814) 899-2071

Dated: Oct. 15, 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

(A4)

No. 82-5386

JOHN F. SALSBURY,
Appellant

vs.

ERIE COUNTY, CITY OF ERIE, DISTRICT ATTORNEY—
VESHECCO, COUNTY DETECTIVE TROMBETTA, ERIE POLICE
DEPARTMENT, POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD, POLICE OFFICER EDWARD
ZAHAR,

Appellees

(Western D.C. Civil No. 82-61)

Submitted Under Third Circuit Rule 12(6)

February 24, 1983

BEFORE: SEITZ, Chief Judge, HIGGINBOTHAM and
ROSENN, Circuit Judges.

COURT OF APPEALS OPINION

(A5)

SEITZ, Chief Judge.

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

Sally Mrvos, Clerk

Dated: Feb. 25, 1983

COURT OF APPEALS OPINION

(A6)

Sally Mrvos, Clerk
United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106

RE: Salsbury vs. Erie County, et al
No. 82-5386

Dear Ms. Mrvos:

Enclosed you will find an original and eleven
(11) copies of a petition for rehearing before the
Court en banc.

Sincerely,

John F. Salsbury

Dated: March 3, 1983

Copies of Certificate of mailing were sent to:

Lawrence L. Kinter, Esq.
Roger H. Taft, Esq.
Timothy J. Lucas, Esq.

DISTRICT COURT OPINION

(A7)

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 82-61

JOHN F. SALSBURY

vs.

ERIE COUNTY, CITY OF ERIE, DISTRICT ATTORNEY VESHECCO,
COUNTY DETECTIVE TROMBETTA, ERIE POLICE DEPARTMENT,
POLICE OFFICER DAVID FULTON, POLICE OFFICER THOMAS
MacDONALD, POLICE OFFICER EDWARD ZAHAR

Before District Judge Glenn E. Mencer Case No. 82-61
was presented as complaint is outlined in its
entirety pages A8 through A16.

John F. Salsbury

IN FEDERAL COURT

AS

vs.

No. 82-61

Erie County
City of Erie
District Attorney Veshecco
County Detective Trombetta
Erie Police Department
Police Officer, David Fulton
Police Officer, Thomas MacDonald
Police Officer, Edward Zahar

And now, this 10th day of March 1982, the Plaintiff files the following complaint against defendants alleging violation of civil rights article 14 Section 1 of the United States Constitution, pursuant to Congressional enacted 42 U.S.C. & 1983.

1. The Plaintiff is an individual residing at 7246 McGill Rd. Harborcreek, Pennsylvania.
2. That the Plaintiff is a citizen of the United States.
3. That the Police Defendants were at the time employees of the City of Erie.
4. That the Prosecutors Office is the Chief Law Enforcement Agency of Erie County.
5. That the County Detective works under direction of the Prosecutors Office.
6. That the Defendants violated the Plaintiff's constitutional rights in the following manner:
 - (a) Police did not enter witness's name in Police report.
 - (b) Police did not enter in the Police report witness's statement that he saw no lights and could

not see the approaching vehicle.

(c) Police misrepresented damage that was done to the truck that struck and killed Plaintiff's son.

(d) Police Officer showed nepotism towards the driver that struck and killed Plaintiff's son.

(e) Police Investigative Officer never looked at the truck.

(f) Photos of the truck were never developed or looked at by the Police Investigative Officer.

(g) Police Investigative Officer would not talk to witnesses when requested.

(h) Police Investigative Officer refused to discuss discrepancies in the Police report that clearly showed the driver was lying.

(i) Police Investigative Officer did not talk to Coroner about the type and extent of injuries.

(j) Police misrepresented facts in order to convince Plaintiff to forget the matter.

(k) Police Investigative Officer failed to respond to Plaintiff's complaints about the investigation and report.

7. That the supervision of the City of Erie and the Erie Police Department have shown a lack of responsibility in their supervision by casually accepting, and thus acquiescing in and implicitly authorizing, this kind of conduct concerning investigations of violent deaths.

8. That the supervision of the City of Erie Police Department has shown its lack of supervision in other representative cases that will be detailed at time of arguments.

9. That the City of Erie was responsible for the lack of proper training of its Police Officers and Traffic Investigative Personnel.

10. That the District Attorney's Office received Plaintiff's complaint approx. March 10, 1980, about the handling of Statements and Evidence by the Erie Police Department. Plaintiff requested an investigation in view of the many weighted questions concerning this matter and the lack, at that time, of a prudent Judicial response.

11. That the correspondence with the District Attorney's Office, following March 10, 1980, will show that there was an intent to skirt the Police issue.

12. That correspondence will show that the District Attorney's Office was very much aware of the intensive private investigation being conducted by Barber Investigating Agency and was also aware of the expense involved.

13. That on February 5, 1981, County Detective Trombetta, in the presence of Plaintiff and Plaintiff's Attorney, tampered with the testimony of the witnesses submitted by the Barber report.

14. That on February 5, 1981, Ray Hipwell (Investigator with Barber Investigative Agency), was barred from the meeting in the D.A.'s Office, during which time, County Detective Trombetta stated that witnesses had changed their testimony and that the Barber report was not correct because, in Trombetta's words, "Someone led the witnesses before statements were signed."

15. As serious as the accusations made by the County Detective, it was not followed through by any further discussion or charges being brought by the D.A.'s Office concerning their findings of alleged improper handling of the testimony of witnesses concerning a violent death.

16. That, because of the seriousness of the matter, it became necessary for Mr. Barber to send investigators to reinterview witnesses. (Mr. Hipwell did not participate because of the allegations made by the County Detective). The findings of the facts were that the County Detective had tampered with witnesses' testimony and was using the power of his office to discredit the case prepared by Barber Agency.

17. That, following the tampering of witnesses by the County Detective, the D.A.'s Office continued in its deprivation of Plaintiff's civil rights by attempting to discredit other experts hired by Plaintiff, from the Pittsburgh area, to look into the facts surrounding his son's death.

18. That Assistant D.A., Chad Connely, stated, "If witnesses would remember what they signed in Barber report, he would have County Detective Trombetta testify against them."

19. That the District Attorney's Office showed inconsequential concern to Plaintiff, regarding missing x-rays that were extremely important to the investigation of his son's death.

20. That the District Attorney's office, maintaining that they had done a very extensive and thorough investigation, which findings contradicted the Barber report, had in fact never made an attempt to speak with the Police Officers involved in this case.

Article 14, Section 1 of the United States Constitution provides that:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or force any laws which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or PROPERTY, without due process of law; nor to deny to any person within its jurisdiction the EQUAL PROTECTION of the laws."

To implement this constitutional provision, the Congress of the United States has enacted 42 U.S.C. & 1983 which provides:

"Every person who, under power of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the DEPRIVATION of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

PURSUANT TO PLAINTIFF'S RIGHT UNDER THE CONSTITUTION OF THE UNITED STATES

1. Plaintiff was denied equal protection of the law, in that the police, if they are going to conduct an investigation of a violent death, should conduct an even-handed investigation and one that is thorough and complete.

2. Plaintiff was denied equal protection of the law, in that the Pennsylvania Criminal Justice System should work even-handedly to vindicate the interest of the families of those persons who have been killed in motor vehicle accidents.

3. Plaintiff was denied his constitutional rights, in that he is entitled to have unimpeded access to courts for civil recourse and the fact that the investigatory reports by authorities has impeded such access in that it caused him undue cost to secure and prepare a civil case.

4. Plaintiff was denied his constitutional rights by the gross and willful negligence of the police officers and their immediate supervision which has caused monitory damages and extra cost incurred, in pursuing normal legal channels to obtain redress.

5. Plaintiff was denied his constitutional rights, by the City of Erie because of negligent supervision and training and the deliberate indifference to the quality of the investigation conducted by the officers involved.

(a) (Article 14-Rights Denied): The first Attorney retained by Plaintiff, being one of the leading Attorneys in this state, confronted by the police report which suppressed witnesses and denied evidence, removed himself from the case stating that Plaintiff did not have a cause for action. This caused Plaintiff a delayed settlement from driver's insurance company, causing injury through loss of use of money.

(b) (Article 14-Rights Denied): The second Attorney retained by Plaintiff withdrew from the case as a result of the meeting held in the District Attorney's Office February 5, 1981. The large sum of money paid to this Attorney was taken from the Plaintiff assuredly had the County Detective reached into his back pocket and secured the same without due process of law.

(c) (Article 14-Rights Denied): The tampering of witnesses by County Detective Trombetta and the attempt of the D.A.'s office to discredit other experts in Plaintiff's case and the threat to testify against witnesses was a bold attempt to completely remove from the Plaintiff his rights guaranteed by the Constitution of the United States. The complete deprivation of Plaintiff's rights was meant to irrevocably remove Plaintiff's rights to the insurance moneys that were due Plaintiff by the consideration of the amassed perponderance of evidence and the numbers of witnesses stated in the Barber report.

(d) (Article 14-Rights Denied): The tampering of witnesses by the County Detective caused Plaintiff to spend moneys for a reinvestigation to secure the legal integrity of these witnesses.

(e) (Article 14-Rights Denied): The deprivation of Plaintiff's rights by the District Attorney's Office has caused Plaintiff continuous expense in trying to seek redress of those same rights guaranteed by 42 U.S.C. & 1983.

6. That Plaintiff has spent in excess of \$29,000 (twenty nine thousand dollars) to secure his rights and that his expenses are continuous in nature.

7. Plaintiff has addressed this matter to the State of Pennsylvania. The State had not provided protection or secured Plaintiff's rights guaranteed under Article 14 of the Constitution of the United States.

WHEREFORE, PLAINTIFF demands judgment from the defendants in an amount in excess of \$10,000 on each action for compensatory and punitive damages.

Respectfully submitted,

John F. Salsbury
7246 McGill Road
Harborcreek, PA 16421
Plaintiff, Pro Se

A Trial By Jury Is Demanded.

DISTRICT COURT OPINION

(A17)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN F. SALSBURY,
Plaintiff

vs.

ERIE COUNTY, CITY OF ERIE, Civil Action No.
DISTRICT ATTORNEY VESHECCO
COUNTY DETECTIVE TROMBETTA
ERIE POLICE DEPARTMENT 82-61 Erie
POLICE OFFICER DAVID FULTON
POLICE OFFICER THOMAS MacDONALD
POLICE OFFICER EDWARD ZAHAR,
Defendants

O P I N I O N

The issues raised by the motions to dismiss the complaint filed by John F. Salsbury against three police officers, the Erie Police Department, City of Erie, Erie County,¹ the County Detective and the District Attorney of Erie County relate to the sufficiency of the complaint. The defendants assert in one manner or another that the complaint fails to state a cause of action against any of the defendants.

The plaintiff alleges that the defendants violated his constitutional rights by not properly investigating a motor vehicle accident that result-

ed in the death of his son. He further alleges that his rights were violated as a result of the failure of the defendants to charge and prosecute the driver of the truck that struck his son.

In ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted, a court must accept as true all well-pleaded allegations of the complaint, construing them in a light most favorable to the plaintiff. Helstoski v. Goldstein, 552 F. 2d 564 (3d Cir. 1977). The Court must construe the complaint liberally and resolve all doubts in favor of the plaintiff. Further, a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957)

However, we must conclude that the facts alleged here are insufficient to establish that Salsbury himself was deprived of "any rights, privileges or immunities secured by the Constitution and laws" of the United States or "of equal protection of the law, or of equal privileges and immunities under the laws," as those limiting phrases are used in the Civil Rights Acts. See Denman v. Wertz, 372 F. 2d 135 (3d Cir. 1967).

In addition, John F. Salsbury has no personal claim as an individual under Section 1983 for the death of his son. Strickland v. City of Easton, Civ. 75-93 (E.D. PA 1976). He does not advance his claim in the capacity of a fiduciary by virtue of being either the executor or administrator of his son's estate. We can only conclude that he is pursuing this lawsuit in his own right and that he does not possess a constitutional or statutory right to have an accident involving others than himself investigated nor the right to insist upon the arrest and prosecution of a party to such accident.

Accordingly, we must grant the motions to dismiss. An appropriate order will be filed.

1 Plaintiff's complaint alleges liability on the County of Erie based upon a theory of respondent superior. Such an allegation will not support a Section 1983 action. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978).

DISTRICT COURT OPINION

(A20)

O R D E R

AND NOW, this 9th day of June, 1982, upon consideration of the various Motions to Dismiss filed on behalf of the defendants in the above-captioned case, it is hereby ORDERED that all said Motions to Dismiss are granted and the complaint filed by the plaintiff is hereby dismissed.

United States District Judge
Glenn E. Mencer

To: Timothy J. Lucas, Esquire
410 Marine Bank Building
Erie, PA 16501

Roger H. Taft, Esquire
600 First National Bank Building
Erie, PA 16501

City of Erie
Larry L. Kinter, Esquire
Assistant City Solicitor
Municipal Building
Erie, PA 16501

DISTRICT COURT OPINION

(A21)

JOHN F. SALSBURY, Administrator
of the Estate of Scott Edward
Salsbury and as Parent and
Natural Guardian of Scott
Edward Salsbury

IN FEDERAL COURT

vs.

NO. 82-167

Erie County
City of Erie
District Attorney Veshecco
County Detective Trombetta
Erie Police Department
Police Officer, David Fulton
Police Officer, Thomas MacDonald
Police Officer, Edward Zahar

And now, this 8th day of July 1982, John
F. Salsbury, as Administrator of the Estate of Scott
Edward Salsbury and as Parent and Natural Guardian
of Scott Edward Salsbury, from here on referred to
as Plaintiff, files the following complaint against
Defendants alleging violation of civil rights
Article 14 Section 1 of the United States Constitu-
tion, pursuant to Congressional enacted 42 U.S.C.
& 1983.

• • • • • • • • • • • • • • •

See footnote #26 Page A23

DISTRICT COURT OPINION

(122)

8. That Plaintiff's rights to the access of the Courts is a right guaranteed under 42 U.S.C. & 1983 and cannot legally be impeded by authorities or agencies acting under color of law in denying these rights for whatever Defendants reasons.

9. That Plaintiff's rights in pursuit of facts and evidence to establish and maintain a wrongful death suit are pursuant to Pennsylvania Law and are clear and cannot legally be impeded by authorities or agencies acting under color of law in denying these rights for whatever the Defendants reasons.

Plaintiff had to endure and maintain unreasonable effort and expense to pursue his rights, which had the Defendants been successful in their efforts in tampering with evidence and witnesses statements to hide the truth, which also effected Plaintiff's rights to Counsel, the wrongful death suit would never have materialized. Defendants acts are actionable under 42 U.S.C. & 1983.

10. Plaintiff maintains that the money awarded to the estate of Scott Edward Salsbury is property and the acts of the Defendants were clearly designed to remove this property right.

DISTRICT COURT OPINION

(A23)

WHEREFORE, PLAINTIFF demands judgment from the Defendants in an amount in excess of \$10,000 on each action for compensatory and punitive damages.

ALSO, Plaintiff is asking the Courts for Injunctions and Declaratory Judgments.

Respectfully submitted,

John F. Salsbury

A Trial By Jury Is Demanded.

26. This complaint was filed to advere the capacity to bring a suit before the Federal Court and for brevity it is not repeated in its entirety.

The complaint is essentially identical to 82-61 (See pages A8 thru A16 of this petition)

The additions of Numbers 8, 9, and 10 as they were added to the complaint 82-167 were meant to help clarify the issues that were before the Court.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
UNITED STATES COURTHOUSE
PITTSBURGH, PENNSYLVANIA 15219

(A24)

July 22, 1982

Glenn E. Mencer
Judge

John F. Salsbury
7246 McGill Road
Harborcreek, PA 16421

Lawrence L. Kinter, Esq.
920 East Avenue
Erie, PA 16503

Roger H. Taft, Esq.
600 First National Bank Building
Erie, PA 16501

RE: JOHN F. SALSBURY vs. ERIE COUNTY, et al.
Civil Action No. 82-167 ERIE

Gentlemen:

Take notice that the above captioned case is scheduled for a Status Conference on the 23rd day of August, 1982 at 4:30 p.m. before the Honorable Glenn E. Mencer, United States Courthouse, Erie, PA.

Sincerely,

Robert V. Barth, Jr.
Courtroom Deputy to
Judge Mencer

DISTRICT COURT OPINION

(A25)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN F. SALSBURY, Administrator
of the Estate of Scott Edward
Salsbury and as Parent and Natural
Guardian of Scott Edward Salsbury,
Plaintiff

vs.

Civil Action

ERIE COUNTY, CITY OF ERIE
DISTRICT ATTORNEY VESHECCO
COUNTY DETECTIVE TROMBETTA
ERIE POLICE DEPARTMENT
POLICE OFFICER DAVID FULTON
POLICE OFFICER THOMAS MacDONALD
POLICE OFFICER EDWARD ZAHAR,
Defendants

No. 82-167 Erie

O R D E R

AND NOW, this 16th day of September, 1982,
upon consideration of the various Motions to Dismiss
filed on behalf of the defendants in the above-
captioned case, IT IS HEREBY ORDERED that all said
Motions to Dismiss are granted and the complaint
filed by the Plaintiff is hereby dismissed.

United Stated District Court
Judge
Glenn E. Mencer

cc: Counsel of Record

John F. Salsbury

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

(A26)

No. 82-5386

JOHN F. SALSBURY,
Appellant

vs.

ERIE COUNTY, CITY OF ERIE, DISTRICT ATTORNEY
VESMECCO, COUNTY DETECTIVE TROMBETTA, ERIE POLICE
DEPARTMENT, POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD, POLICE OFFICER EDWARD
ZAHAR,

(Civil No. 82-61-W.D. Pa.-Erie)

SUR PETITION FOR REHEARING

PRESENT: SEITZ, Chief Judge, ADAMS, GIBBONS, HUNTER,
WEIS, GARTH, HIGGINBOTHAM, SLOVITER,
BECKER, Circuit Judges and ROSENN,
Senior Circuit Judge.

The petition for rehearing filed by appellant
in the above entitled case having been submitted to
the judges who participated in the decision of this
court and to all the other available circuit judges
of the circuit in regular active service, and no
judge who concurred in the decision having asked
for rehearing, and a majority of the circuit judges
of the circuit in regular active service not having
voted for rehearing by the court in banc, the peti-
tion for rehearing is denied.

5/6/83

UNITED STATES COURT OF APPEALS (A27)
FOR THE THIRD CIRCUIT

No. 82-5386

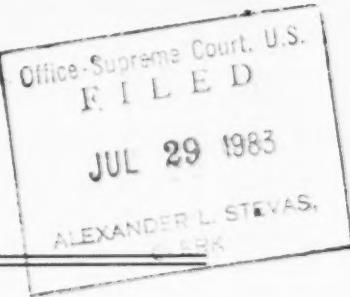
JOHN F. SALSBURY, Appellant

vs.

ERIE COUNTY, CITY OF ERIE, DISTRICT ATTORNEY
VESHECCO, COUNTY DETECTIVE TROMBETTA, ERIE POLICE
DEPARTMENT, POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD, POLICE OFFICER DAVID
ZAHAR

Pursuant to Rule 41 (b) of the Federal Rules
of Appellate Procedure, it is O R D E R E D that
issuance of the certified judgment in lieu of
formal mandate in the above cause be, and it is
hereby stayed until June 12, 1983.

Dated: May 12, 1983



NO. 82-2038

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1982

JOHN F. SALSBURY, AS PARENT, NATURAL
GUARDIAN AND ADMINISTRATOR OF THE
ESTATE OF SCOTT EDWARD SALSBURY,
Petitioner

v.

ERIE COUNTY, CITY OF ERIE, DISTRICT
ATTORNEY VESHECCO, COUNTY DETECTIVE
TROMBETTA, ERIE POLICE DEPARTMENT,
POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD AND POLICE
OFFICER EDWARD ZAHAR

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT
ERIE COUNTY

Roger H. Taft, Esq.
MacDonald, Illig, Jones & Britton
600 First National Bank Building
Erie, Pennsylvania 16501
(814) 453-7611

*Attorney for Respondent
Erie County*

COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. Whether the Petition for a Writ of Certiorari must be dismissed as untimely.
- II. Whether the Civil Rights Act, 42 U.S.C. §1983, does not afford a cause of action to a deceased based on acts occurring after his death.
- III. Whether liability of a municipality under the Civil Rights Act, 42 U.S.C. §1983, cannot be established under the theory of respondeat superior.

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IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1982
NO. 82-2038

JOHN F. SALSBURY, AS PARENT, NATURAL
GUARDIAN AND ADMINISTRATOR OF THE
ESTATE OF SCOTT EDWARD SALSBURY,
Petitioner

v.

ERIE COUNTY, CITY OF ERIE, DISTRICT
ATTORNEY VESHECCO, COUNTY DETECTIVE
TROMBETTA, ERIE POLICE DEPARTMENT,
POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD AND POLICE
OFFICER EDWARD ZAHAR

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT
ERIE COUNTY

Respondent ERIE COUNTY, by its attorney, Roger H. Taft, Esq., presents this Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit pursuant to Rule 22 of the Rules of the United States Supreme Court.

OPINIONS AND JUDGMENTS BELOW

The Opinion and Order of the United States District Court for the Western District of Pennsylvania at No. 82-167 Erie, entered September 16, 1982, is not reported in any official report, but is found in the Appendix for Appellant, p. 53-57, filed with the United States Court of Appeals for the Third Circuit which respondent Erie County has requested be certified and transmitted to the Supreme Court of the United States pursuant to Rules 19.1 and 19.2 of the Rules of the Supreme Court of the United States.

The Judgment Order of the United States Court of Appeals for the Third Circuit at No. 82-5586, entered February 25, 1983, is reported at 703 F.2d 552 (3d Cir. 1983).

JURISDICTION

The Court lacks jurisdiction over the Petition for a Writ of Certiorari because the Petition was not docketed until June 13, 1983 and is from entry of a Judgment Order dated February 25, 1983 by the United States Court of Appeals at No. 82-5586. The Petition, therefore, is untimely under 28 U.S.C. §2101(c) and Rule 20.1 of the Rules of the Supreme Court of the United States.

Although there was a related case before the United States Court of Appeals for the Third Circuit at No. 82-5386, in which John F. Salsbury, individually, was the plaintiff, the two cases were not consolidated, and the caption of the Petition for a Writ of Certiorari would indicate that the Petition is from the appeal at No. 82-5586.

STATUTE INVOLVED

The Civil Rights Act, 42 U.S.C. §1983, provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

COUNTER-STATEMENT OF CASE

I. Proceedings

Petitioner John F. Salsbury as Administrator of the Estate of Scott Edward Salsbury and as Parent and Natural Guardian of Scott Edward Salsbury (hereinafter referred to as "Salsbury") commenced an action on July 8, 1982 against respondents Erie County, City of Erie, District Attorney Veshecco, County Detective Trombetta, Erie Police Department, Police Officer David Fulton, Police Officer Thomas MacDonald, and Police Officer Edward Zahar by filing a Complaint pro se with the United States District Court for the Western District of Pennsylvania at Civil Action No. 82-167 Erie. The Complaint sought damages under 42 U.S.C. §1983 for an alleged civil rights violation resulting from events related to the death of Salsbury's son, Scott Edward Salsbury, by motor vehicle accident. (R.1-7). Respondent Erie County and the other defendants filed Motions to Dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure asserting, among other defenses, that the Complaint failed to state a claim upon which relief can be granted. (R.8-9, 15-18, 20-24).

On September 16, 1982, the United States District Court of the Western District of Pennsylvania entered an Opinion and Order granting all Motions to Dismiss and dismissing the Complaint pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. (R.53-57). On September 20, 1982, Salsbury filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit at No. 82-5586. (Notice of Appeal; Docket Entries).

On February 25, 1983, the United States Court of Appeals entered a Judgment Order affirming the judgment of the United States District Court for the Western District of Pennsylvania. No Petition for Rehearing was filed. Salsbury filed the Petition for a Writ of Certiorari with the United States Supreme Court on June 13, 1983.

Although John F. Salsbury, individually, commenced a separate action in the United States District Court for the Western District of Pennsylvania at Civil Action No. 82-61 Erie, from

which an appeal was taken to the United States Court of Appeals for the Third Circuit at No. 82-5386, the two appeals were not consolidated. It appears from the caption of the Petition for a Writ of Certiorari that the Petition is from the appeal at No. 82-5586.

II. Facts

This statement of the facts is taken from the Complaint and the Motions to Dismiss which provide the basis for the District Court's Opinion and Order entered September 16, 1982 at Civil Action No. 82-167 Erie, affirmed by the United States Court of Appeals for the Third Circuit at No. 82-5586. It should be noted that the statement of facts set forth in Salsbury's Petition for a Writ of Certiorari appears to be his own version of events which were never made part of the record below.

The Complaint in this case was filed by Salsbury pro se, alleging a civil rights violation under 42 U.S.C. §1983 as a result of events related to the death of his son by motor vehicle accident. The Complaint appears to allege an improper investigation of the accident by the City of Erie Police and improper handling of a private criminal complaint by particular employees of the Office of the District Attorney of Erie County, including alleged tampering with witnesses.

The Complaint does not contain any specific allegations against defendant Erie County, other than an assertion that the Prosecutor's Office is the chief law enforcement agency of Erie County. (Complaint, ¶4; R.2). Rather, the Complaint alleges improper handling of Salsbury's private criminal complaint and tampering with witnesses by respondent County Detective Trombetta and Assistant District Attorney Chad D. Connely. (Complaint, ¶13, 14, 16, 17, 19; R.4-5). There is no allegation whatsoever against respondent District Attorney Veshecco. (R.1-7). The Complaint further alleges that the Office of the District Attorney first became involved following receipt of a complaint by Salsbury regarding the investigation by the City of Erie Police Department, after the death of Salsbury's son. (Complaint, ¶10; R.3).

Respondent Erie County filed a Motion to Dismiss under Rule 12(b) (6) of the Federal Rules of Civil Procedure, asserting that Salsbury failed to state a claim against Erie County upon which relief can be granted. (R.15-18). Although that Motion to Dismiss set forth several grounds for dismissal, the Opinion and Order entered by the United States District Court for the Western District of Pennsylvania on September 16, 1982 addressed the specific issue of Salsbury's effort to establish liability against Erie County under the theory of respondeat superior. (R.53, 56).

SUMMARY OF ARGUMENT

I. The Petition for a Writ of Certiorari must be dismissed as untimely. The Judgment Order of the United States Court of Appeals for the Third Circuit at No. 82-5586 was entered on February 25, 1983, and Salsbury filed no petition for rehearing with respect to that appeal. The Petition for a Writ of Certiorari was not docketed until June 13, 1983, 108 days after entry of the Judgment Order.

II. Even if the Petition for a Writ of Certiorari is deemed to be timely from the Judgment Order in the appeal at No. 82-5586, the Petition should be denied because the decision of the United States Court of Appeals for the Third Circuit is in accord with decisions of other federal courts of appeals. A deceased is not a "person" within the scope of 42 U.S.C. §1983; civil rights of a person cannot be violated after that person has died. Respondent Erie County had no involvement with events surrounding the motor vehicle accident until after the death of Salsbury's son and after the investigation by the City of Erie Police Department.

III. Even if the Petition for a Writ of Certiorari is deemed to be timely from the Judgment Order in the appeal at No. 82-5586, the Petition for a Writ of Certiorari should be denied because the decision of the United States Court of Appeals for the Third Circuit is in accord with settled decisions of the Supreme Court of the United States. Liability of a municipality under 42 U.S.C. §1983 cannot be established under the theory of respondeat superior. The alleged actions of particular employees of the Office of the District Attorney were not taken pursuant to any policy statement, ordinance, regulation or decision officially adopted and promulgated by officers of Erie County or pursuant to an established government custom.

ARGUMENT

I. THE PETITION FOR A WRIT OF CERTIORARI MUST BE DISMISSED AS UNTIMELY.

The Petition for a Writ of Certiorari must be dismissed as untimely. The record establishes that the United States Court of Appeals for the Third Circuit entered a Judgment Order on February 25, 1983 at No. 82-5586, affirming the judgment of the United States District Court for the Western District of Pennsylvania in favor of all respondents. Salsbury did not file a petition for rehearing at No. 82-5586, and the Petition for a Writ of Certiorari was not docketed until June 13, 1983, some 108 days after entry of the Judgment Order.

There was a separate, related appeal before the United States Court of Appeals for the Third Circuit at No. 82-5386 in an action which had been filed by John F. Salsbury, individually, but the two appeals were not consolidated. The caption of the Petition for a Writ of Certiorari would indicate that the Petition is from the appeal at No. 82-5586.

Salsbury's Petition for a Writ of Certiorari was untimely under 28 U.S.C. §2101(c) and Rule 20.1 of the Rules of the Supreme Court of the United States. The Petition for a Writ of Certiorari, therefore, must be dismissed. See *Parker v. People of State of Illinois*, 333 U.S. 571, 576, 68 S.Ct. 708, 710 (1948); *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 418, 43 S.Ct. 458, 462 (1923); *Rust Land & Lumber Co. v. Jackson*, 250 U.S. 71, 76, 39 S.Ct. 424, 426 (1919).

II. THE CIVIL RIGHTS ACT, 42 U.S.C. §1983, DOES NOT AFFORD A CAUSE OF ACTION TO A DECEASED BASED ON ACTS OCCURRING AFTER HIS DEATH.

Even if the Petition for a Writ of Certiorari is deemed timely, the Petition should be denied because the decision of the United States Court of Appeals for the Third Circuit is in accord with decisions of other federal courts of appeals which have held that

a deceased has no cause of action under 42 U.S.C. §1983 for acts occurring after his death.

Salsbury's Complaint seeks to establish liability upon respondent Erie County based on alleged acts which occurred after the death of Scott Edward Salsbury. The civil rights of a person, however, cannot be violated after that person has died. The Complaint against respondent Erie County, therefore, was properly dismissed pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

This civil rights action arises out of events following a motor vehicle accident which caused the death of Salsbury's son, Scott Edward Salsbury. Salsbury contends that the City of Erie Police Department improperly investigated the accident. He also contends that when he complained about his investigation to the Office of the District Attorney, two employees of that office failed to properly handle his complaint and engaged in witness tampering. The Office of the District Attorney, however, did not become involved until after the investigation by the City of Erie Police Department and after the death of Salsbury's son.

The United States Courts of Appeals which have addressed alleged civil rights violations which occurred post obitum have uniformly held that the civil rights of a person cannot be violated once that person has died. See *Silkwood v. Kerr-McGee Corp.*, 637 F.2d 743, 749 (10th Cir. 1980), *cert. denied*, 454 U.S. 833, 102 S.Ct. 132 (1981); *Guyton v. Phillips*, 606 F.2d 248, 250-251 (9th Cir.), *cert. denied*, 445 U.S. 916, 100 S.Ct. 1276 (1979); *Whitehurst v. Wright*, 592 F.2d 834, 840-841 (5th Cir. 1979). Simply stated, a decedent's civil rights terminate upon his death.

In *Silkwood v. Kerr-McGee Corp.*, 637 F.2d 743 (10th Cir. 1980), *cert. denied*, 454 U.S. 833, 102 S.Ct. 132 (1981), the estate and heirs of a corporate employee made a claim under the Civil Rights Act of 1871, 42 U.S.C. §1985(3), alleging that corporate officials and FBI agents engaged in a conspiracy to cover up efforts to hinder a union organizational effort after the death of the employee. 637 F.2d at 745-746. The United States Court

of Appeals for the Tenth Circuit affirmed the dismissal of this civil rights claim, stating:

"The conspiracy's alleged purpose was two-fold: to violate the rights of Silkwood and others, and to cover up these violations. *We agree with the Ninth Circuit that the civil rights of a person cannot be violated once that person has died.* [Citations deleted]. It is clear then that the FBI agents have not violated the civil rights of Silkwood by cover-up actions taken after her death." [Emphasis added].

637 F.2d at 749.

In *Guyton v. Phillips*, 606 F.2d 248 (9th Cir.), cert. denied, 445 U.S. 916, 100 S.Ct. 1276 (1979), the administratrix of an estate brought an action under the Civil Rights Act, 42 U.S.C. §1983, alleging that certain police officers shot and killed her decedent and then conspired to cover up their wrongful acts. The administratrix also alleged that public officials, including the District Attorney, joined the cover-up conspiracy. 606 F.2d at 249-250. The United States Court of Appeals for the Ninth Circuit affirmed dismissal of the civil rights claim related to the cover-up charge, stating:

"The issue presented is whether the Civil Rights Act affords a cause of action on behalf of a deceased for acts occurring after the death of that person. We hold it does not and affirm the judgment of the district court.

* * *

We find that the Civil Rights Act, 42 U.S.C. §§1983 and 1985, does not provide a cause of action on behalf of a deceased based upon alleged violations of the deceased's civil rights which occurred after his death. A 'deceased' is not a 'person' for the purposes of 42 U.S.C. §§1983 and 1985, nor for the constitutional rights which the Civil Rights Act serve to protect. [Emphasis added].

606 F.2d at 250.

Finally, in *Whitehurst v. Wright*, 592 F.2d 834 (5th Cir. 1979), the mother and administratrix of a decedent who had been mistakenly shot in connection with a bank robbery brought a civil rights action under 42 U.S.C. §1983, alleging a cover-up of the shooting. 592 F.2d at 836-837. The United States Court of Appeals for the Fifth Circuit affirmed the dismissal of the civil rights claim related to the cover-up, stating:

“The trial court correctly ruled that the events occurring *post obitum* could form no part of the deceased's 42 U.S.C. §1983 or §1985 action. The essence of a claim under either section is the deprivation of a person's constitutional rights. Here, the events of the alleged cover-up took place after Bernard Whitehurst had been shot and killed. No allegation was made to any conspiracy to kill Whitehurst or to cover up the event existing before the shooting took place. *After death, one is no longer a person within our constitutional and statutory framework, and has no rights of which he may be deprived.* A claim in this instance was properly denied.” [Emphasis added].

592 F.2d at 840.

In summary, the Office of the District Attorney did not become involved in events related to the motor vehicle accident which killed Salsbury's son until after the son had died. All alleged events involving respondent Erie County occurred post obitum and, therefore, cannot be the basis for a violation of 42 U.S.C. §1983. The Petition for a Writ of Certiorari should be denied.

III. LIABILITY OF A MUNICIPALITY UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983, CANNOT BE ESTABLISHED UNDER THE THEORY OF RESPONDEAT SUPERIOR.

Even if the Petition for a Writ of Certiorari is deemed timely, the Petition should be denied because the decision of the United States Court of Appeals for the Third Circuit is in accord with settled decisions of the Supreme Court of the United States which have held that liability of a municipality under 42 U.S.C. §1983

cannot be based on the doctrine of respondeat superior.

Salsbury's Complaint seeks to establish liability upon respondent Erie County under the theory of respondeat superior. Liability of a municipality under 42 U.S.C. §1983 cannot be established under such a theory and, therefore, the Complaint against respondent Erie County was properly dismissed pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The extent to which 42 U.S.C. §1983 applies to a municipality, such as Erie County, is set forth in *Monell v. Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978). In *Monell*, the United States Supreme Court overruled one holding of *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473 (1961), which established that municipal corporations were immune from liability under Section 1983. The Court, however, upheld a second holding of *Monroe* which established that a municipal corporation cannot be held liable under Section 1983 based on the doctrine of respondeat superior. 436 U.S. at 664 and n.7, 98 S.Ct. 2022 and n.7. In defining the limited nature of a municipality's liability under 42 U.S.C. §1983, the Court stated:

"Local governing bodies, therefore, can be sued directly under §1983 for monetary, declaratory, or injunctive relief where, as here, *the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers*. Moreover, although the touchstone of the §1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, *local governments, like every other §1983 'person' by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels.*" [Emphasis added].

436 U.S. at 690, 98 S.Ct. at 2035-2036. In other words, the municipality's action must be taken pursuant to an officially

adopted government policy or pursuant to an established government custom. See also *Owen v. City of Independence*, 445 U.S. 622, 100 S.Ct. 1398, 1406 (1980).

In *Polk County v. Dodson*, 454 U.S. 312, 102 S.Ct. 445 (1981), the United States Supreme Court again addressed the limited scope of a municipality's liability under 42 U.S.C. §1983, when a prisoner brought a pro se action against Polk County, Iowa and several other defendants arising out of the withdrawal of a public defender as his counsel. The Court reaffirmed that Section 1983 will not support a claim based on the respondeat superior theory of liability. 102 S.Ct. at 453. The Court noted that official policy must be the moving force of the alleged constitutional violation. 102 S.Ct. at 454.

Turning to the allegations of Salsbury's Complaint, it is clear that the only basis for the alleged liability of respondent Erie County is the doctrine of respondeat superior. Much of the Complaint deals with an alleged improper investigation of a motor vehicle accident by the City of Erie Police Department. The other claims against the Office of the District Attorney are based on alleged actions of two employees, respondent County Detective Trombetta and Chad Connely, an Assistant District Attorney. There is no allegation whatsoever of any personal involvement by respondent District Attorney Veshecco.

The Complaint does not assert that the alleged actions by the two employees of the Office of the District Attorney were taken pursuant to any policy statement, ordinance, regulation or decision officially adopted and promulgated by the officers of Erie County or pursuant to any established government custom. Rather, the Complaint deals with Salsbury's concern over the handling of a private criminal complaint, arising out of a motor vehicle accident which involved the death of his son, by particular employees of the Office of the District Attorney.

As tested by the *Monell* rule, respondent Erie County cannot be liable under 42 U.S.C. §1983 even if the allegations of the Complaint are true. The Petition for a Writ of Certiorari should be denied.

CONCLUSION

Wherefore, respondent Erie County respectfully requests this Honorable Court to dismiss or deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of this Brief in Opposition of Respondent Erie County were sent this 28th day of July, 1983 by first class United States Mail to the following parties of record or to their counsel, pursuant to Rule 28.3 of the Rules of the Supreme Court of the United States:

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Office

FILED

AUG 15 1983

NO. 82-2038

ALEXANDER L STEVENS
CLERK

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1983

JOHN F. SALSBURY, AS PARENT, NATURAL
GUARDIAN AND ADMINISTRATOR OF THE
ESTATE OF SCOTT EDWARD SALSBURY,
Petitioner

v.
ERIE COUNTY, CITY OF ERIE, DISTRICT
ATTORNEY VESHECCO, COUNTY DETECTIVE
TROMBETTA, ERIE POLICE DEPARTMENT,
POLICE OFFICER DAVID FULTON, POLICE
OFFICER THOMAS MacDONALD AND POLICE
OFFICER EDWARD ZAHAR

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

REPLY BRIEF TO ARGUMENTS RAISED BY
RESPONDENT ERIE COUNTY

John F. Salsbury
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Petitioner, Pro Se

STATEMENT OF THE MERITS FOR PETITIONER IN STANDING
AGAINST THE COUNTER STATEMENT OF EACH QUESTION PRE-
SENTED BY RESPONDENT, ERIE COUNTY

I. Whether the Petition for a Writ of Certiorari
must be dismissed as untimely.

II. Whether the Civil Rights Act, 42 U.S.C. &1983
does not afford a cause of action to a deceased based
on acts occurring after his death.

III. Whether liability of a municipality under the
Civil Rights Act, 42 U.S.C. &1983, cannot be establi-
shed under the theory of respondeat superior.

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STATEMENT OF MERITS FOR PETITIONER

QUESTION PRESENTED BY ERIE COUNTY:

I. Whether the petition related to case No. 82-5586 (District Court No. 82-167) must be dismissed as untimely?

In filing before the Supreme Court of the United States, Petitioner Pro Se, lacking legal experience, suffered great difficulty, but nonetheless has tried to follow and maintain the rules of the Court with integrity and respect that must be shown to this Court.

Petitioner selected the case to appeal based upon how it might best serve the Courts and those who must follow in the future in their efforts to maintain the Civil Rights of this Nation.

On page (ii) the Table of Contents of Petition for Writ of Certiorari, the Appeal and Judgment Order is shown on page A4 and A5. If the Court will please note this number is 82-5386, which corresponds to the District Court number 82-61. On page (iii) the Table of Contents are the petition for rehearing and the stay of mandate of judgment, pages A26 and A27. The Court will note that on both pages A26 and A27 are the numbers 82-5386.

STATEMENT OF MERITS FOR PETITIONER

Also, on page (iii) the Table of Contents, it is noted that Case No. 82-167 and the order of the District Court in Case No. 82-167 are listed as to reference only and Petitioner was directed by the rules of the Court to reference this case.

There can be no doubt in anyones mind upon reading the petition and having the understanding that the Clerk of the Supreme Court cannot and would not docket this case as put forth by Erie County.

Petitioner Pro Se, making a decision which case to Appeal to the Supreme Court, selected Case No. 82-5386 on its merits that would allow the Supreme Court to use its full power to supervise the Lower Courts.

The matters brought before the Supreme Court of the United States should be those which have an impact upon the administration of justice as its serves this entire Nation.

On pages 27, 28, and 29 under Reasons for Granting the Writ as listed in Petitioner's Petition, the Court can read rule 17 (a) and Rule 9(a) as it was presented on Appeal to the Third District.

It is important that the District Court and the Appeals Court in their administration of justice, make an effort to maintain and follow the rules of Civil Procedure.

STATEMENT OF MERITS FOR PETITIONER

Had the Appeals Court properly decided the issues put before it, it should have ruled that Case No. 82-167 Erie was filed unnecessarily by a Plaintiff who had filed Pro Se following what was an incorrect judgment of the District Court in Case No. 82-61.

The Plaintiff Pro Se, having filed 82-167, did not realize that this was an unnecessary exercise until he was preparing for the Appeal. Petitioner, aside from the Questions Presented in Case No. 82-2038 before the Supreme Court, is asking the Court to consider the importance of Rule 17 (a) and 9(a) as it is administrated by the Lower Courts.

The perfidy of Respondent, Erie County, to request of the United States Supreme Court to dismiss as untimely Petitioner's Petition in the manner to which they have put forth is extremely argumentative and totally incorrect.

QUESTION PRESENTED BY ERIE COUNTY:

II. Whether the Civil Rights Act, 42 USC. &1983 does not afford a cause of action to a deceased based on acts occurring after his death.

STATEMENT OF MERITS FOR PETITIONER

Of all the events that occurred, there were criminal and civil rights acts committed in violation of the rights of Scott Edward Salsbury while he was alive by the City of Erie Police with full knowledge of these acts communicated to the District Attorney's Office. There were also acts against the estate of Scott Edward Salsbury and against the proper administration of that estate in violation of State and Federal law. These acts were also against the administrator of the estate of Scott Edward Salsbury, who under state law does have rights after the death of Scott Salsbury under the laws of the State of Pennsylvania.

The attempts to remove these States rights caused great financial harm to that estate and to the administrator and father who was trying to gain rights under law.

It remains for this Court to decide if the money awarded to the estates of our children by the circumstances of their death is property under the definition of our Constitution and Federal laws. Please review the Questions Presented No. 1 through 4 of the Petition for a Writ of Certiorari page (i).

STATEMENT OF MERITS FOR PETITIONER

The statement by Respondent, Erie County, that there can be no violations of the rights of Scott Edward Salsbury after he had died is not in question, and for this reason, the arguments as put forth in the Brief in Opposition are not relevant to their position and standing under Federal law. Their arguments must be denied for they have not directed their arguments towards the true nature of the Civil Rights Act that has been committed.

The Respondent's counter statement of the case is incorrect and the facts stated in the case are incorrect, and since Erie County has been made aware of certain facts that can easily be checked, the continual presenting of misinformation to the District Court, Appeals Court, and finally to the Supreme Court of the United States is considered by Petitioner as an act of perjury before a Court which must make judgments on true facts and must rely upon some integrity of those who are putting information before the Court.

Specifically on page 10 of Brief in Opposition of Respondent, Erie County, paragraph three under the Facts state that the complaint alleges improper handling of a private criminal complaint, and this has been continuously propounded throughout these proceedings.

STATEMENT OF MERITS FOR PETITIONER

Petitioner has continually stated to the Courts, which information is in the hands of the Respondent, that all the acts occurred prior to the filing of any private criminal complaint. Such acts of the Defendants denied Petitioner rights to counsel and for this reason, Petitioner was without counsel for a considerable duration of time after the tampering of witnesses statements and as such no private criminal complaint was initiated until sometime later after a search for counsel, which itself was effected by what occurred February 5, 1981 in the District Attorney's Office. These repeated attempts to make as a "matter of fact" that which is not true stands before the Courts as improper particularly when Respondent is aware of its misleading connotations to the Courts.

QUESTION PRESENTED BY ERIE COUNTY:

III. Whether liability of a municipality under the Civil Rights Act, 42 U.S.C &1983, cannot be established under the theory of Respondeat Superior.

The District Attorney's Office does not function without direction with a tight-fisted hand by the District Attorney himself.

STATEMENT OF MERITS FOR PETITIONER

If Respondent, Erie County is alleging that all of what has occurred has happened without the knowledge of the District Attorney, it must be stated that Case No. 83-15 is now before the Supreme Court and this case in the District Court charges that the District Attorney having knowledge of a conspiracy and having the power to prevent or stop the continuation of this conspiracy failed to do so. The evidence in this regard is overwhelming and will not be denied.

In this Case, Petitioner will bring before the Federal Court other families which will show that similar acts were committed which established favoritism to the families of the members of local government. The District Attorney's Office is aware that I am privileged to such information which includes state police evidence, transcripts of hearings, and the statements of the families involved.

The kind of acts that have occurred institutes the policy by the officers of Erie County and as such the theory of Respondeat Superior cannot be upheld if these families are allowed to testify.

CONCLUSION

WHEREFORE, Petitioner respectfully requests this Honorable Court to deny the Brief in Opposition by Respondent, Erie County, for a dismissal or to deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Petitioner, Pro Se

Dated: August 5, 1983